UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-10606-GAO

JOHN YOUNG,
Petitioner

v.

ROBERT F. MURPHY, JR.,
Superintendent of Massachusetts Treatment Center
Respondent.

OPINION AND ORDER
May 5, 2009

O'TOOLE, D.J.

After a jury trial, the petitioner, John Young, was civilly committed to the Massachusetts Treatment Center as a "sexually dangerous person" pursuant to Chapter 123A of the Massachusetts General Laws ("Care, Treatment and Rehabilitation of Sexually Dangerous Persons"). Young has petitioned under 28 U.S.C. § 2254 for a writ of habeas corpus on the ground that his confinement violates his due process rights. His argument is that his commitment depends on the psychiatric diagnosis that he suffers from Antisocial Personality Disorder ("APD") and that the diagnosis of APD fails to distinguish between sexually dangerous offenders subject to civil commitment and ordinary recidivists, as required by the Supreme Court's decisions in Foucha v. Louisiana, 504 U.S. 71 (1992), and Kansas v. Crane, 534 U.S. 407 (2002).

The sole question presented by the petition is whether the decision of the Appeals Court of Massachusetts ("Appeals Court") affirming his commitment was contrary to, or an unreasonable application of, the due process standard articulated in Foucha and Crane. See 28 U.S.C. § 2254(d)(1). Civil commitment, according to the Supreme Court, comports with due process if "proof of dangerousness is coupled . . . with the proof of some additional factor, such as mental illness or mental abnormality." Crane, 534 U.S. at 409-10 (internal quotation omitted); see also Foucha, 504 U.S. at 82 (requiring civil commitment to rest on more than mere dangerousness).[1] The Court has said that requiring proof of this "additional factor" ensures that only a "limited subclass of dangerous persons," comprised of "those who suffer from a volitional impairment rendering them dangerous beyond their control," are subject to civil commitment. Kansas v. Hendricks, 521 U.S. 346, 357-58 (1997). In other words, this "additional factor" works to distinguish ordinary recidivists not subject to civil commitment from sexually dangerous offenders subject to civil commitment. See id.

Presented with the same issue now raised in this habeas petition, the Appeals Court agreed with Young that a diagnosis of APD *alone* would not provide a sufficient basis for commitment. See Commonwealth v. Young, 845 N.E.2d 1223 (Table), 2006 WL 1042916, at *2 (Mass. App. Ct. Apr. 20, 2006). The Appeals Court, however, emphasized that "a diagnosis of APD is sufficient . . . where, as here, it establishes that the respondent suffers from a 'personality disorder', *and* as a result thereof

[1] Contrary to Young's assertion, Foucha does not stand for the proposition that the "United States Supreme Court has acknowledged that antisocial personality disorder (APD) fails to distinguish those subject to commitment from more typical recidivists." (Pet'r's Mem. in Supp. of Pet. for Writ of Habeas Corpus 5.) In fact, this decision has little to do with APD at all. APD factored into the Court's reasoning only insofar as Louisiana did not consider APD to be a mental illness, Foucha, 504 U.S. at 71; thus, Foucha's commitment rested solely on a finding of dangerousness, see id. at 82. Massachusetts courts, in contrast, have determined that APD meets the statutory definition of personality disorder. Commonwealth v. Reese, 781 N.E.2d 1225, 1231 n.9 (Mass. 2003). The Supreme Court has "traditionally left to legislators the task of defining terms of a medical nature that have legal significance." Kansas v. Hendricks, 521 U.S. 346, 359 (1997).

lacks the power to control his sexual impulses such that he is likely to engage in sexual offenses if not confined to a secure facility." Id. (emphasis in original).

This conclusion that Young lacked the power to control his sexual impulses finds support not only in Young's personal and criminal history, such as "the details of his 1981 rape conviction," id. at *1, but also in the testimony of the three qualified examiners who were witnesses at his commitment trial. Drs. Robert H. Joss, Barbara Quiñones, and Leonard Peebles all testified that Young suffered from APD, as defined in the Diagnostic & Statistical Manual of Mental Disorders (4th ed. 1994), and, as a result of this disorder, he lacked the ability to control his sexual impulses. (See Commitment Trial Tr. 29, 48, 127, Jan. 29, 2003.)

Even if cross-examination of these qualified examiners gave some basis for doubting their opinions, as Young argues, it is clear from a review of the entire trial transcript that ample evidence existed from which the jury could justifiably have found that Young suffered from a "mental abnormality or personality disorder which makes [him] likely to engage in sexual offenses if not confined to a secure facility," which is the crucial part of the statutory criteria. See Mass. Gen. Laws ch. 123A, § 1 (defining "sexually dangerous person"). In making such a finding beyond a reasonable doubt, as required, id. § 14(d), the jury necessarily determined both that Young suffered from a mental abnormality or personality disorder and that control of his sexual impulses was compromised by the disorder, making it likely that he would continue to commit sexual offenses.

Civil commitment based on a diagnosis of a recognized personality disorder and a finding that, as a result of this disorder, Young lacks the ability to control his sexual impulses is the quintessential example of compliance with Foucha and Crane. It is this lack of control resulting from Young's APD, and recognized by the Appeals Court, which distinguishes him from the ordinary recidivist. The state

courts did not act contrary to, or unreasonably apply, the due process standard articulated in Foucha and Crane. Young's petition for a writ of habeas corpus (dkt. no. 1) is DENIED.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge